

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Broadcast Localism) MB Docket No. 04-233
)

To: Secretary, Federal Communications Commission
Attention: The Commission

**JOINT REPLY COMMENTS
OF PUBLIC TELEVISION AND RADIO LICENSEES**

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SUMMARY

Licensees of over 400 public television and radio stations submit these reply comments in support of the Comments filed by the Association of Public Television Stations and the Public Broadcasting Service (“APTS/PBS”) and by National Public Radio (“NPR”) in this proceeding.

APTS/PBS and NPR accurately state the ties between public broadcasters and their communities and the resulting high degree of local responsiveness in their programming. The commitment of public broadcasters to their local communities is unquestioned. APTS/PBS and NPR also show that the FCC’s proposals here are unnecessary and burdensome and, in the case of public TV and radio stations, will result in a diminution of service to local communities, undermining rather than furthering the FCC’s goals.

Requiring each public TV and radio station to maintain a physical staff presence at each transmitter during all hours of operation is operationally unnecessary, extremely expensive, and even dangerous. The result can only be a reduction in service to smaller and rural communities, and in the number of hours public broadcast stations are on the air.

Returning to outmoded main studio requirements would squander investment in current studios. Rescinding or curtailing main studio waivers for state and regional public broadcasting networks would result in a loss of service, particularly to smaller and rural communities.

Renewal processing guidelines have not in the past been applied to public broadcasters and are unnecessary at this time. Such guidelines would lead to FCC oversight of programming, raising significant First Amendment concerns, as the FCC inevitably substitutes its programming judgments for those of public broadcasters.

The enhanced disclosure requirements (already imposed on public TV stations, but subject to reconsideration in a separate docket) are surprisingly and excessively burdensome, and will result in negative impact on stations’ finances and operations. They are also unfair in that they penalize stations, such as public TV and radio stations, which focus on local, independent and issue-responsive programming services.

The following group of licensees of over 400 public television and radio stations, consisting of Alabama Educational Television Commission, Alaska Public Telecommunications, Inc., Arizona Board of Regents for Benefit of the University of Arizona, Arkansas Educational Television Commission, Board of Governors of Missouri State University, Board of Regents, University of Wisconsin System, Board of Trustees for San Diego State University, Board of Trustees of Community College District No. 508, County of Cook and State of Illinois, Board of Trustees of the University of Illinois, Central Michigan University, District Board of Trustees, Pensacola Junior College, Eastern New Mexico University, Elkhart Community Schools, Greater Chattanooga Public Television Corp., Greater Cincinnati Television Educational Foundation, Greater Dayton Public Television, Inc., Greater Washington

Educational Telecommunications Association, Hampton Roads Educational Telecommunications Association, Inc., Idaho State Board of Education (Boise State University), Illinois Valley Public Telecommunications Corp., Iowa Public Broadcasting Board, Iowa State University of Science and Technology, Hawaii Public Television Foundation, Kansas Public Telecommunications Service, Inc., KCTS Television, Kentucky Authority for Educational Television, Kentucky Public Radio, Inc., Kent State University, KVIE, Inc., Lehigh Valley Public Telecommunications Corp., Maine Public Broadcasting Corp., Michiana Public Broadcasting Corp., Milwaukee Area Technical College District Board, Mountain Lake Public Telecommunications Council, Nashville Public Radio, Nebraska Educational Telecommunications Commission, Nevada Public Radio, Northeast Indiana Public Radio, Inc., Northeastern Educational Television of Ohio, Inc., Northeastern Pennsylvania Educational Television Association, Northern Arizona University, Northern Minnesota Public Television, Inc., The Ohio State University, Ohio University, Oklahoma Educational Television Authority, Oklahoma State University, Oregon State Board of Higher Education for the University of Oregon, Pacific Lutheran University, Inc., Prairie Public Broadcasting, Inc., Public Broadcasting Council of Central New York, Public Broadcasting of Northwest Pennsylvania, Inc., Public Television 19, Inc., Regents of New Mexico State University, Regents of the University of New Mexico, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico, Rocky Mountain Public Broadcasting

Network, Inc., Sistema Universitario Ana G. Mendez, Inc., Smoky Hills Public Television Corp., South Carolina Educational Television Commission, St. Louis Regional Educational and Public Television Commission, State of Wisconsin – Educational Communications Board, Upper Cumberland Broadcast Council, University of Alaska, University of Houston System, The University of Iowa, University of Michigan, University of Minnesota, University of Nebraska, University of Northern Iowa, University of Wyoming, Utah State University of Agriculture and Applied Science, WAMC, Washington State University, West Central Illinois Educational Telecommunications Corp., Window to the World Communications, Inc., WITF, Inc., WNIN Tri-State Public Media, Inc. and WSKG Public Telecommunications Council (collectively, “Public Broadcasting Licensees”), by their attorneys, submit these joint reply comments responsive to the *Report on Broadcast Localism and Notice of Proposed Rulemaking*, FCC 07-218 (released January 24, 2008), proposing a number of changes to the FCC’s rules to improve broadcasters’ service to local communities.

The Public Broadcasting Licensees are public and private universities and university systems, state educational communications authorities, boards and commissions, community college, technical college and public school districts, and non-profit community-based educational telecommunications entities. Collectively, they are licensees of 156 full power public television stations, 248 full power public radio stations, and numerous

television and FM translator stations and related facilities, over which they provide an incredible array of services responsive to their local communities.

The Public Broadcasting Licensees have reviewed comments filed in this proceeding by various parties, including those of the Association of Public Television Stations and the Public Broadcasting Service (“APTS/PBS”)¹ and National Public Radio, Inc. (“NPR”)², and they strongly endorse the positions taken by APTS/PBS and NPR. APTS/PBS and NPR demonstrate in considerable detail the ties between public broadcasters and their communities and the resulting high degree of community responsiveness in their programming, which make the FCC’s proposals here unnecessary. APTS/PBS and NPR also show how burdensome these requirements would be. The inevitable result of their application to public broadcasters would be a reduction in the very service the FCC seeks to foster.³

Public Broadcasting and Localism

Public TV and radio stations have demonstrated their commitment to localism. As demonstrated by APTS/PBS and NPR, public broadcasting in the United States is de-centralized by design, and public TV and radio stations are inherently local in their institutional structures, missions and programming. They are licensed to governmental agencies, educational

¹ Comments of the Association of Public Television Stations and the Public Broadcasting Service, filed April 28, 2008.

² Comments of National Public Radio, Inc., filed April 28, 2008.

³ Many of the Public Broadcasting Licensees also filed individual Comments in this proceeding providing detailed information about their operations and the effect of the proposals, and those comments deserve the FCC’s careful consideration as well.

institutions or community-based non-profit entities, locally governed by the officials and/or boards of these entities, locally staffed by professionals dedicated to public service, and programmed with content that focuses on serving community interests and needs. Public TV and radio stations are often the only locally owned and operated stations left in their communities. Given their reliance on direct fund-raising from viewers and listeners, local businesses and institutions, the FCC has previously acknowledged that their very survival depends on their service to and support from their communities.⁴

Public TV and radio stations have a long history of exemplary local service, extensive examples of which are provided in the APTS/PBS and NPR comments, and other comments filed in this proceeding. Given their commitment and local service, the Public Broadcasting Licensees urge that the FCC should not impose these new requirements on public broadcasters, as they would undermine rather than enhance the local service these stations are already providing.

Physical Presence at Station Facilities

The FCC has proposed requiring licensees to maintain a physical presence at each broadcasting facility during all hours of operation, essentially turning back the clock and reinstating outdated rules that were

⁴ *See Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, 98 FCC2nd 746, at ¶ 19 (1984) (“We believe that this essential economic relationship between the public licensee and its audience will ensure that public stations discover and serve local needs.”).

eliminated years ago.⁵ This is unnecessary and would be extremely burdensome, and even dangerous. It is clearly no longer necessary that transmitters be attended from a technical standpoint and, indeed, many transmitters are located in relatively inaccessible locations, particularly during winter months, and requiring constant travel back and forth to and attendance at such places amplifies risks of harm to station personnel. Moreover, the costs of attending all facilities, during all broadcast hours, would be enormous for many public broadcasters. The efficiencies currently employed by public TV and radio stations in remotely operating their stations enable them to reach substantially more viewers and listeners, with more programming over longer broadcast days. Requiring constant local attention at each station would inevitably reduce hours of broadcast service, curtail resources available for production of local programming, and probably deprive many smaller and rural communities of service altogether. The result would be a classic example of the law of unintended consequences. As with many other proposals here, this regulatory tool, although intended to encourage localism, would actually undermine the FCC's localism goals.

Main Studio Requirements

⁵*See Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operations of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, 10 FCC Rcd. 11479 (1995).

In order to increase interaction between broadcasters and their communities, the FCC also proposes returning to its old main studio location requirements – absent waiver, requiring each station to have a main studio in its community of license. For public broadcasters, this really raises two issues: first, whether they might be required to abandon studios that have already been lawfully established outside their communities of license pursuant to decisions of the FCC in 1987 and 1998⁶, which permit flexibility for the location of main studios within the contours of any station in the market; and second, whether the FCC would rescind or no longer issue main studio waivers that are now commonly granted to public broadcasters to enable them to operate their stations as parts of a regional or state-wide network.⁷ A change in the main studio rules and policies in either respect would be devastating to many if not most public TV and radio stations, and would be particularly unreasonable given the diminishing importance of the physical location of studios in light of the wide array of options stations have to communicate with their communities.

At this point, requiring stations to abandon and relocate local main studios which have lawfully been placed outside licensed communities would be an extraordinarily costly move. Public stations have enormous investment

⁶*Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 2 FCC Rcd. 3215 (1987); *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd. 15691 (1998).

⁷See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 3 FCC Rcd. 5024 at ¶ 30 (1988).

in their current facilities, including in many cases recent upgrades to state-of-the-art digital equipment. That investment has in many cases been paid for with Federal, state and other public funding, as well as targeted charitable donations and debt funding (including tax exempt bond financing). There is no possibly valid basis for the FCC to require stations to squander that investment to pick up and move their studios back into their nearby communities of license.

Furthermore, rescinding or curtailing main studio waivers granted by the FCC in the context of regional and state-wide public TV and radio networks would sacrifice critical operational efficiencies that make public TV and radio programming available throughout most of the United States, consistent with the goals of Section 396(a) of the Communications Act. The inevitable result would be the loss of service, particularly to smaller and rural communities, and/or the curtailing of service to all viewers and listeners.

Renewal Processing Guidelines

The FCC proposes to adopt renewal processing guidelines based on local programming. As both APTS/PBS and NPR point out, however, if the FCC intends these guidelines to apply to public broadcasting stations, the FCC incorrectly speaks of “reintroducing” them, because such renewal benchmarks (eliminated for commercial radio and television stations by the

FCC in 1981 and 1984, respectively⁸) have not in the past ever been applied to public TV and radio stations. In any event, renewal processing guidelines based on local content or service are unnecessary for public TV and radio stations given the core and substantial commitment of these stations to local programming, their local ownership and operation, and their reliance on direct community support for survival.

In addition, processing guidelines based on programming categories will require public stations to develop and implement extensive new systems for categorizing and logging programming, the unnecessary costs of which will large given the multiplicity of programming streams now delivered by digital operations at both public TV and radio stations, and will divert resources from programming services the FCC intends to foster.

Finally, programming guidelines, and the inevitable FCC oversight of programming that they lead to, raise significant First Amendment concerns. Ultimately, if the guidelines are to have any teeth, the FCC will need to make judgments as to the value of the content of particular programs, formats and other programming decisions. As NPR points out, not only does such an approach improperly substitute the FCC's judgment for the broadcaster's, but it ultimately has the effect of forcing broadcasters to air particular types of programs merely to satisfy regulatory requirements.

Community Advisory Boards and Community Ascertainment

⁸*Deregulation of Radio*, 84 F.C.C. 2d 968 (1981); *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 F.C.C. 2d 1075 (1984).

The FCC also proposes requiring stations to establish community advisory boards and undertake other forms of community outreach. Once again, FCC requirements in this nature are unnecessary for public broadcasters. Many public TV and radio stations already are required by Section 396(k)(8) of the Communications Act to have a community advisory board as a condition of their receiving funds from the Corporation for Public Broadcasting. Only stations licensed to public agencies and institutions are exempt from this requirement (given Congress' recognition of the public governance and ultimate public control of such agencies and institutions) and many of the exempt public TV and radio licensees have advisory boards in any event. There is simply no reason for the FCC to "pile on" additional advisory board requirements.

Because public service, and the community support it engenders, is the lifeblood of public broadcasters, all public TV and radio stations engage in substantial community outreach efforts, and FCC imposition of further ascertainment-like interactions with local communities is not needed. Public TV and radio stations are strongly invested in serving their local communities, and have developed extensive and creative mechanisms to determine community needs and interests. New rules by the FCC would only divert resources and attention from effective practices stations are now using to formalized ascertainment procedures that might not best suit their circumstances.

Enhanced Disclosure

Finally, the FCC proposes to impose enhanced disclosure requirements on public radio stations – requirements that it has already adopted for public TV stations in the proceeding in MM Docket Nos. 00-168 and 00-44 (the “Enhanced Disclosure Proceeding”), but are subject to reconsideration in that docket. The Public Broadcasting Licensees urge the FCC not to adopt this proposal for public radio stations and, indeed, to roll it back to the extent that it has already been adopted for public TV stations.

As public TV licensees and representatives, including many of the Public Broadcasting Licensees here, have pointed out in the Enhanced Disclosure Proceeding, the quarterly standardized programming reporting requirement that is central to the enhanced disclosure regulations is surprisingly and excessively burdensome, so much so that the cost in resources and the resulting negative impact on station’s finances and operations will be hugely out of proportion to any possible value to be achieved. This is particularly true in view of the amount and richness of responsive programming services that are provided by public TV and radio stations, consistent with their mission and history.

Paradoxically, and unfairly, the reporting burden imposed by the Commission’s enhanced disclosure rules on public broadcasting stations would be far, far greater than the burden falling on other stations by virtue of the amount of public TV and radio stations’ local, independent and issue-responsive programming services (including entire multicast streams devoted to such services), all of which would have to be meticulously recorded and

reported. The enhanced disclosure requirements in that sense provide a perverse incentive for stations that are actually accomplishing what the FCC desires – the *more* responsive programming a station airs, the *greater* the recording and reporting burden that station would bear.

In addition, as pointed out by public television representatives in the Enhanced Disclosure Proceeding, there are practical concerns with the FCC's proposal to require stations to post their public files on their websites, because of the FCC's determination that the material so posted should comply with certain accessibility guidelines maintained by the World Wide Web Consortium.

Public broadcasters do not object to the requirement of moving public file information to their websites (although the initial effort and expense to do so will be very considerable and there will be continuing expense as well). Nor do public broadcasters have any disagreement with the concept of making websites accessible; indeed, public TV and radio stations support efforts to make their services as widely accessible as possible. The Public Broadcasting Licensees are concerned, however, about accessibility requirements for certain public file materials such as FCC forms, maps, charts, graphs, antenna sketches, and so forth – materials found in abundance in public files -- that are NOT readily made accessible without essentially having to recreate entire documents in new formats and with additional information provided. Having to do so would impose a vast and unwarranted burden on public TV and radio stations. The FCC should

therefore clarify that any such rules as may actually be adopted interpret the accessibility requirement in a manner that acknowledges and minimizes this burden on stations.

Conclusion

For the foregoing reasons, the Public Broadcasting Licensees strongly support the positions taken in this proceeding by APTS/PBS and NPR, and urge the FCC to ensure that any rules adopted in this proceeding applicable to public TV and radio stations are consistent with their comments.

Respectfully submitted,

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COMMISSION

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